



EARLY CLAIM INVESTIGATION

By Scott W. Bermack

Having defended retailers and property owners for close to 25 years, there are only a few things I enjoy more than getting a call from a client within 24 hours of a significant incident or event. Early notice of a potential claim provides defense counsel (and a TPA like Carl Warren & Company) with an opportunity to document transient conditions, meet and evaluate eyewitnesses and speak with management personnel responsible for the smooth operation of the premises. All while maintaining the attorney client privilege.

One cannot overestimate the importance of preserving evidence, such as surveillance footage, and of capturing impressions via photographs or written statements. Whether documenting that a floor was sparkling clean or a staircase was not broken or that there was a problem at the site is critical. Review by expert witnesses at this point can be comprehensive in scope and enlightening in substance. Further, such early involvement also allows development of a corporate response plan and helps all involved to speak with one voice to the extent crisis management is appropriate.

In retail operations in particular, the work force tends to be young and somewhat transient, so locating key witnesses becomes more challenging with each passing month. By the time suit is filed, often years later, former employees — even managers — can either disappear or become hostile. Working with the claim team early on empowers the employees to assist in formulating a defense strategy, which can be ready if a lawsuit is filed. Reducing the facts to sworn statements can become quite useful in the face of witnesses who either can't recall the circumstances or change their version by the time formal discovery is under way.

Not every accident results in a lawsuit but identifying those losses where the potential damages justify the expense of early defense and TPA involvement will pay for itself in no time.

Article courtesy of Scott W. Bermack. Scott Bermack is the Retail Team Leader and a Partner in the New York City office of Ropers Majeski Kohn & Bentley, PC, headquartered in Redwood City, California, with offices in San Francisco, San Jose, Los Angeles, New York, Boston, and Hong Kong (affiliated). He can be reached at sbermack@rmkb.com.